IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1365 OF 2006

Vasant G. Kharat ...Petitioner

Vs.

The State of Maharashtra & Ors. ...Respondents

Shri A.M.Riyaz for the Petitioner.
Shri U.V.Nikam, A.P.P for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 17, 2006.

P.C.:

1. Heard the Advocate appearing for the Petitioner. The second Respondent filed a complaint under section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate exercised power under proviso to clause (b) of section 142 of the said Act of 1881 and condoned the delay in filing of the complainant. The learned Magistrate, however, directed the complaint (second Respondent) to pay costs of Rs.3,000/-. The second Respondent filed a revision Application in the Sessions Court being aggrieved by the order directing payment of costs of Rs.3,000/-. By the impugned judgment and order dated 01st March, 2006, the learned Adhoc Additional Sessions Judge, Nasik reduced the amount of costs to Rs.1,000/-.

2. The learned Advocate for the Petitioner submitted that the order passed by the learned Magistrate under the proviso to clause (b) of section 142 of the said Act of 1881 was itself illegal. He submitted that in fact no complaint has been filed under section 138 of the said Act of 1881.

3. The Petitioner did not challenge the order passed by the learned Magistrate of condonation of delay. The Petitioner was aware about the said order as he was represented before the Sessions Court in revision Application filed by the second respondent. The sessions court has reduced the amount of costs payable by the second Respondent from Rs.3,000/- to Rs.1,000/-.

4. As the Petitioner never challenged the order passed by the learned Magistrate, this Writ Petition under Article 227 of the Constitution of India cannot be entertained only against order reducing the quantum of costs. The Petition is rejected. It is made clear that all contentions of the Petitioner on merits of the complaint filed by the second Respondent are expressly kept open.

JUDGE